STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 23, 2003
v	No. 239733 Macomb Circuit Court
WYMAN WESLEY COBB III, Defendant-Appellant.	LC No. 01-000755-FC

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for armed robbery, MCL 750.529, and assault with intent to do great bodily harm less than murder, MCL 750.84. The trial court sentenced defendant to thirty to forty-five years' imprisonment for the armed robbery conviction and five to fifteen years' imprisonment for the assault with intent to commit great bodily harm less than murder conviction. We affirm.

I. Sufficiency of the Evidence

Defendant argues that there was insufficient evidence to support his assault with intent to do great bodily harm less than murder conviction. Defendant did not need to take any special steps to preserve this issue for appeal. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In reviewing a claim of insufficient evidence, this Court must determine whether, taking the evidence in the light most favorable to the prosecution, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

"The elements of assault with intent to do great bodily harm less than murder are (1) an assault, i.e., 'an attempt or offer with force and violence to do corporal hurt to another' coupled with (2) a specific intent to do great bodily harm less than murder." *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325, amended 453 Mich 1204 (1996), quoting *People v Smith*, 217 Mich 669, 673; 187 NW 304 (1922). Defendant does not contest that there was an assault, but argues that the evidence was insufficient to show that he possessed the specific intent to do great bodily harm less than murder.

The victim testified at trial that defendant approached her, grabbed her jacket and began pushing her. The two struggled and fell onto a snow bank. The victim believed that defendant

was going to abduct or rape her. After a moment, defendant got off of her, and backed away. It was at that time that defendant pulled out a weapon, which was referred to as a "knife," "a dagger" and a "tool," and used the weapon in a threatening manner toward the victim. Defendant hit the victim under her arm and on her face, hitting her underneath her eye and cutting her down her face along the side of her nose. Defendant then "yanked" the victim's purse twice, and got it away from her. Defendant ran to the waiting car, and rode away.

Intent to do great bodily harm can be inferred from the fact that defendant wielded a dangerous weapon. *People v Crane*, 27 Mich App 201, 204; 183 NW2d 307 (1970). When defendant approached the victim to rob her, he carried with him a dangerous weapon. When the victim refused to surrender her purse, defendant placed the object in her face and cut her. The jury could have reasonably inferred from this action that defendant was willing to stop at nothing to commit the crime, and that he intended to inflict bodily harm. We conclude that the prosecutor offered sufficient evidence from which a rational jury could conclude that the prosecutor proved the requisite intent beyond a reasonable doubt.

II. Claims of Instructional Error Affecting the Verdict

Defendant also argues that the trial court improperly coerced the jurors into rendering a compromise verdict. For support for this contention, defendant directs this Court to the following language contained in the trial court's instructions to the jury:

> If you want to communicate with when [sic] me while you're in the jury room, please have your foreperson write a note and give it to Jeff, my bailiff. It is not proper for you to talk directly to the judge, lawyers, court officers or other persons involved in the case. As you discuss the case you must not let anyone, even me, know how your voting stands. So don't come back and say it is eight to four or eleven to one or something like that.
>
> Therefore, until you return with a unanimous verdict, do not reveal to anyone outside the jury room.

Defendant maintains that, by so instructing, the trial court improperly pressured the jurors to only return a unanimous verdict.

Defendant failed to make a timely objection to the jury instruction. Therefore, this issue is unpreserved. We review unpreserved claims of error for plain error that affects substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999); *People v Hess*, 214 Mich App 33, 36; 543 NW2d 332 (1995). We find no error, plain or otherwise. Reviewing the trial court's instruction in context, the trial court was merely instructing the jurors to avoid any improper communication with the court or with court officers. The trial court's reference to particular votes was examples of improper updates that the jurors should avoid making.

III. Denial of Court Appointed Expert

Defendant contends that the trial court's decision denying his request for funds to appoint an expert on eyewitness unreliability amounts to an abuse of discretion. In *People v Herndon*, 246 Mich App 371, 398-399; 633 NW2d 376 (2002), this Court ruled that the issue of whether a

trial court abused its discretion in denying a motion to hire an expert witness depended on whether the defendant could "safely proceed to trial" without the expert and that even if the court erred, the error would be harmless if it did not completely prohibit defendant from mounting the defense. Here, defendant was able to offer his defense of mistaken identity at trial without an expert's testimony because he was able to challenge the eyewitnesses' testimony. Defense counsel questioned the victim and an eyewitness at length about the conditions in which the identification was made. Moreover, defense counsel asked the detective about the conditions in which the identification was made, in an attempt to discredit the victim's identification. We conclude the trial court's denial of defendant's request for funds to obtain an expert witness does not warrant reversal of defendant's convictions.

IV. Conduct of Prosecution

Defendant also claims that he was denied a fair trial because of repeated instances of prosecutorial misconduct. Defendant alleges that the prosecutor improperly vouched for the credibility of Detective Pierog by asking him about being selected Officer of the Year. A prosecutor is not permitted to vouch for the credibility of a witness to the effect that she has some special knowledge concerning the witness' truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). In the absence of an attack on credibility, bolstering evidence is not permitted. MRE 608(a)(2); *People v Lukity*, 460 Mich 484, 491; 596 NW2d 607 (1999). Here, there is nothing about this question, which suggests that the prosecutor had any special knowledge about Pierog's truthfulness. Accordingly, defendant's contention that this examination warrants reversal of his conviction is without merit.

Defendant also lists eight instances of alleged prosecutorial misconduct in his standard 11 brief and contends that, in each of the instances, the prosecutor improperly vouched for the credibility of witnesses. However, defendant does not go beyond merely listing the alleged misconduct and the bald assertion of error. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). In any event, the challenged remarks, read in context, were proper comment on the evidence adduced at trial.

V. Right to Counsel at Photographic Lineup

Defendant also asserts he was denied his constitutional right to counsel at his photographic lineup. Defendant maintains that he was entitled to have counsel present. Although defendant concedes that he was not in custody at the time of the lineup, he argues that the police could have easily brought him to the lineup because he was the only suspect.

The right to have counsel present at a photographic lineup attaches when the party is in custody. *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993). Although this Court has carved out two exceptions to this blanket rule, in *People v McKenzie*, 205 Mich App 466, 471-472; 517 NW2d 791 (1994), and *People v Cotton*, 38 Mich App 763; 197 NW2d 90 (1972), neither of them apply here. Accordingly, the trial court's decision to allow evidence of defendant's photographic lineup to be admitted at trial was not error.

VI. Proportionality of Sentence

Defendant argues that his sentence was disproportionate under the doctrine of proportionality because it fails to consider the offense or offender as set forth in *People v Milbourn,* 435 Mich 630; 461 NW2d 1 (1990). Moreover, defendant asserts that the trial court erred by failing to set forth its reasoning for such a harsh sentence. However, defendant's sentences were within the sentencing guidelines.

MCL 769.34(10) provides:

> If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals *shall affirm* that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence. [Emphasis added.]

Therefore, we are required to conclude that defendant's sentence, which is within the appropriate guideline range, is proportionate.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Brian K. Zahra